

<div>CITY OF- SAN JOSÉ, CALIFORNIA Department of Planning, Building and Code Enforcement 801 North First Street, Room 400 San José, California 95110-1795</div> <div>STAFF REPORT</div>		<div>Hearing Date/Agenda Number P.C. 08/27/03 Item:</div> <div>File Number CP03-048</div> <div>Application Type Conditional Use Permit</div> <div>Council District 1</div> <div>Planning Area West Valley</div> <div>Assessor's Parcel Number(s) 303-40-020, 017 & 018</div>	
PROJECT DESCRIPTION		Completed by: Lori Moniz	
Location: Southwest corner of Olsen Drive and South Winchester Boulevard (Winchester Mystery House)			
Gross Acreage: 4.48		Net Acreage: 3.81	Net Density: N/A
Existing Zoning: CG Commercial General		Existing Use: Winchester Mystery House	
Proposed Zoning: No change		Proposed Use: Same w/incidental amusement game arcade	
GENERAL PLAN		Completed by: LM	
Land Use/Transportation Diagram Designation Private Recreation		Project Conformance: [x] Yes [] No [] See Analysis and Recommendations	
SURROUNDING LAND USES AND ZONING		Completed by: LM	
North: Movie Theaters/Restaurants		CG Commercial General	
East: Commercial Shopping Center		CG Commercial General and A(PD) Planned Development	
South: Single-family residential (Mobile Homes)		A(PD) Planned Development	
West: : Movie Theaters		CG Commercial General	
ENVIRONMENTAL STATUS		Completed by: LM	
[] Environmental Impact Report found complete [] Negative Declaration circulated on [] Negative Declaration adopted on		[x] Exempt [] Environmental Review Incomplete	
FILE HISTORY		Completed by: LM	
Annexation Title: Winchester No. 26		Date: October 6, 1976	
PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION			
[x] Approval [] Approval with Conditions [] Denial [] Uphold Director's Decision		Date: _____	Approved by: _____ [X] Action [] Recommendation
APPLICANT/ DEVELOPER	OWNER		
Shozo Kagoshima 525 South Winchester Blvd. San José, CA 95128	Winchester Mystery House, LLC Attn: Ray K. Farris II 525 South Winchester Blvd. San José, CA 95128		

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: Lori Moniz

Department of Public Works

No comments

Other Departments and Agencies

N/A

GENERAL CORRESPONDENCE

None received.

ANALYSIS AND RECOMMENDATIONS**BACKGROUND**

The applicant, Winchester Mystery House, LLC, is requesting a Conditional Use Permit (CUP) to legalize (for purposes of Zoning Ordinance conformance) the existing amusement game arcade component of the Winchester Mystery House tourist attraction . The property is zoned CG – Commercial. The Zoning Ordinance requires a Conditional Use Permit for amusement game arcades in the commercial zoning districts. An amusement game arcade includes any establishment with ten or more video games, pinball machines, or similar devices.

The Winchester Mystery House was designated as a City Historic Landmark (HL 95-101) in 1996. It is also listed on the National Register of Historic Places and is registered as a California Historic Landmark. The subject arcade has been in operation for several years at its present location within the existing 394 square foot accessory structure at the time the Winchester House was designated as an historic landmark. The historic integrity of the site will not be affected by this project since no exterior changes are proposed.

The Winchester Mystery House is a family-oriented regional tourist attraction. Tours of the mansion are offered between 9 a.m. and 7 p.m. daily. The amusement arcade is located in the patio area where guests wait for their tours to begin. The subject arcade is not and has not served as a stand alone destination but rather an incidental use.

Project Description

The applicant is requesting approval of an existing amusement game arcade, which includes approximately 21 video games, pinball machines, and similar coin-operated devices. No new construction, physical expansion or alteration of the existing façade is proposed.

GENERAL PLAN CONFORMANCE

The proposed amusement game arcade is consistent with the site's designation of Private Recreation on the San José 2020 General Plan Land Use/Transportation Diagram in that higher intensity recreation uses with the Private Recreation designation, such as amusement parks, are allowed within the Urban Service Area.

ENVIRONMENTAL REVIEW

The Director of Planning has determined that this project is exempt from environmental review under the provisions of the California Environmental Quality Act (CEQA). CEQA provides an exemption (section 15301) for small projects that consist of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures. The proposed project is to legalize an existing arcade use, which will result in no physical changes to the building.

ANALYSIS

The analysis section of this report addresses: 1) conformance to the Zoning Ordinance, 2) compatibility with surrounding uses, and 3) Police Department concerns.

Zoning Conformance

The Zoning Ordinance specifies that amusement game arcades shall be "allowed only as an incidental use to other allowed recreation uses." The current proposal conforms to this requirement. The existing use is a tourist attraction providing tours of a historic mansion to the public for entertainment purposes.

The total square footage of the ground floor of the mansion and accessory buildings is 45,267 square feet. Approximately 394 square feet of floor area is used for video games and other similar devices that fall under the definition of an amusement game arcade. Therefore, the subject arcade would be considered incidental to the other allowed recreation uses.

No new expansion of the facility is proposed. The existing structure where the arcade is located is over 100 feet from an adjacent use or property line. Therefore, the project's structure conforms to all relevant development standards prescribed in the CG Commercial General Zoning District. Pursuant to the Zoning Ordinance, two (2) parking spaces are required for this incidental use. The overall facility, a unique use that is not specifically recognized by the Zoning Ordinance provides a total of 83 parking spaces, which has been deemed to be adequate.

Compatibility with Adjacent Uses

Although there is a mobile home park to the south of the site, the closest property line is approximately 210 feet from the arcade building. In addition, there is no direct access from the mobile home park to the Winchester Mystery House facility. The potential for noise or privacy impacts related to the parking lot appears to be minimal, and no different from what might be expected for any other commercial use in this location. Although most businesses in the City of San José may, by right, stay open until midnight, this commercial establishment presently closes by 7 p.m. No beyond-midnight extended hours of operation are proposed or approved under this permit.

Police Department Issues

In keeping with standard practices, this proposal was referred to the Police Department and the Code Enforcement Division. The Police Department indicated that there were no problems or concerns with the arcade. No comments or concerns were offered by Code Enforcement. It should be noted that, unlike some other amusement game arcades, the purpose of this arcade is to offer temporary, incidental entertainment to guests at a historic tourist attraction while they wait for their tour to begin. Issues such as loitering, which can be problematic for stand alone, independent amusement game arcades, do not exist with the subject facility.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Private Recreation on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the CG Commercial Zoning District.
3. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from environmental review.
4. The proposal is for legalization of an existing amusement game arcade at an existing commercial establishment.
5. The proposed arcade would allow up to 21 coin operated amusement game devices.
6. The proposed arcade will serve as in incidental use to the guided tours that are provided on the premises.
7. The Police Department has indicated that they do not have any concerns with the existing/proposed use.
8. The subject property and structures are designated as City, State and National historic landmarks.
9. The arcade has been in existence prior to the establishment of the Winchester Mystery House as a City Historic Landmark.
10. The applicant proposes no new construction or exterior modifications to any existing structures.
11. Customers of the establishment have access to the approximately 83 parking spaces on site.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit. Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** The existing development shall conform to approved development plans for the property, on file with the Department of City Planning and Building and to the San José Building Code (San José Municipal Code, Title 24). No New construction is approved.
2. **Hours of Operation.** Hours of operation shall be limited to 6:00 a.m. to 12:00 Midnight, seven (7) days a week. No extended hours of operation are approved.
3. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
4. **Lighting.** This permit allows no new on-site lighting.
5. **Sign Approval.** No signs are approved at this time. Any new proposed signs shall be subject to approval by the Director of Planning.
6. **Fire Lanes.** Fire lanes, suitably designated "FIRE LANE - NO PARKING," shall be provided to the satisfaction of the Fire Chief.
7. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
8. **Generators.** This permit does not include approval of any emergency back-up generator on the subject site.
9. **Other Required Permits.** The applicant shall maintain in good standing all other permits, including police permits, required for this use to the satisfaction of the Director of Planning.
10. **Limitation on Amusement Games.** This facility shall maintain no more than 21 amusement game devices. All such games shall be contained within the existing, subject 394 square foot structure.
11. **Outside Storage.** No outside storage is permitted for the project except in areas designated on the approved plan set.

12. **Fire Safety.** The applicant shall meet all requirements of the Fire Department at the Building Permit stage.
13. **Noise Limits.** Noise generated by proposed use shall not be subject to the Title 20 noise performance standards. Noise generated by the use shall not exceed 55 dB DNL, at the nearest residential property line, 60dB DNL at the nearest commercial property line and 70 dB DNL at the nearest industrial property line.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

C: Applicant, Dennis Faz, San José Police Department-Permits Unit
Attachments: Location Map, Plan sets